

BOARD OF APPEALS CASE NO. 5367	*	BEFORE THE
APPLICANT: Ronald Potter	*	ZONING HEARING EXAMINER
REQUEST: Variance to construct an addition within the required side yard setback; 2201 Brookhaven Court, Fallston	*	OF HARFORD COUNTY
	*	Hearing Advertised
	*	Aegis: 7/18/03 & 7/23/03
HEARING DATE: August 20, 2003	*	Record: 7/18/03 & 7/25/03
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ZONING HEARING EXAMINER'S DECISION

The Applicant, Ronald Potter, is requesting a variance, pursuant to Section 267-35B, Table III, of the Harford County Code, to construct an addition within the required 15 foot side, total 35 foot side yard setback (proposed 10 foot, total 31 foot) in a Rural Residential District.

The subject parcel is located at 2201 Brookhaven Court, Fallston, MD 21047 in the Third Election District, and is more particularly identified on Tax Map 48, Grid 2A, Parcel 409, Lot 88. The parcel contains approximately 0.91 acres, more or less.

The Applicant, Ronald Potter, appeared and testified that he is the owner of the subject property. He stated that he had read the Department of Planning and Zoning's Staff Report, and had no changes or corrections to the information contained therein. Mr. Potter described his property as a long narrow lot, approximately 0.91 acres in size. He stated that the lot slopes down from the road to the front of the house, and then continues downward at a 25% grade toward a stream located at the rear of the property. The parcel is improved by a split level dwelling, a rear deck and patio, a blacktopped drive to the right of the dwelling, and a storage shed located at the end of the driveway.

The Applicant stated that he proposes to construct a two-car garage, with a combination second story den/office, storage room, and a powder room. The proposed addition would be 10 feet from the western property line. The existing dwelling is 21 feet from the eastern property line. He is therefore requesting a 5-foot variance from the required 15 foot west side setback. In addition, because there is a 35-foot total side yard requirement, he is also requesting a 4-foot variance from the total side yard setback.

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Mr. Potter testified that his home is one of the only ones in the neighborhood without a garage. He further stated that due to the placement of the existing home, and the severe slope of the rear yard, it would not be practical to construct the proposed garage behind the dwelling.

The witness testified that his home is located in Fallston, in the Belle Meade, Section Two subdivision, and that most of the garages in that neighborhood are similar in construction to the one which he proposes to build. He also stated that the proposed garage will be compatible with both the existing dwelling, and with other properties in the neighborhood. Finally, Mr. Potter indicated that the granting of the requested variance will not have any adverse impact on neighboring properties. He stated that he has discussed the requested garage addition with all adjoining property owners, none of whom had any objection to the proposed construction.

Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning appeared and testified regarding the findings of fact and recommendations made by that agency. Mr. McClune stated that the Department recommended approval of the subject request in its July 21, 2003 Staff Report. He also indicated that the Department found the subject property to be unique because its topography is rolling to steep, and it contains a slope with a grade in excess of 25%. According to the witness, the proposed location is the only practical place for the construction of an attached garage on the subject property. Building a garage behind the existing dwelling would require extensive grading, which is undesirable because of the stream located at the lower rear portion of the property.

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The witness further testified the Department found that the proposed addition will have no adverse impact on any neighboring properties. Most homes in the Belle Meade Subdivision already have attached two car garages, and the proposed structure will be compatible with other garages in the neighborhood. In addition, he testified that he proposed construction will be approximately 30 feet from the closest dwelling, which is located south of the subject property.

No witnesses appeared in opposition to the requested variance.

CONCLUSION

The Applicant, Ronald Potter, is requesting a variance, pursuant to Section 267-35B, Table III, of the Harford County Code, to construct an addition within the required 15 foot side, total 35 foot side yard setback (proposed 10 foot, total 31 foot) in an RR District.

Section 267-35B, Table III of the Harford County Code, requires a minimum 15 foot side yard width, and a combined total 35-foot side yard width.

Harford County Code Section 267-11 permits the granting of variances, stating:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

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The Maryland Court of Special Appeals set forth a two prong test for determining whether a variance should be granted in the case of *Cromwell v. Ward*, 102 Md. App. 691, (1995). This test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. "A lot is unique only if there is a finding that a peculiar characteristic or unusual circumstance relating only to the subject property causes the zoning ordinance to impact more severely on that property than on surrounding properties." *Cromwell, supra*, at 721. If the subject property is unique, the trier of fact may proceed to the second prong of the test. This involves a determination as to whether literal enforcement of the zoning ordinance, with regard to the unique property, would result in practical difficulty or unreasonable hardship to the property owner.

The Hearing Examiner finds that the subject property is unique. The topography is rolling to steep, and slopes downward at a grade in excess of 25% toward a stream located near the rear property line. The Hearing Examiner also finds that literal enforcement of the Code would result in both unreasonable hardship and practical difficulty for the Applicant. Most of the other homes in the Belle Meade, Section Two subdivision have attached two car garages. Because the proposed location is the only practical place on the property to construct an attached garage without the necessity of extensive grading, the Applicants will be denied property rights commonly enjoyed by others in their neighborhood if the requested variance is not granted.

Finally, the Hearing Examiner finds that the granting of the requested variance will neither be substantially detrimental to adjacent properties, nor materially impair the purpose of the Code or the public interest because the proposed garage is compatible with both the existing dwelling, and with other properties in their neighborhood.

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The Hearing Examiner recommends approval of the Applicant's request subject to the following conditions:

1. That the Applicant obtain all necessary permits and inspections for the proposed garage.
2. That the Applicant not encroach further into the setback than the distance requested herein.

Date **SEPTEMBER 22, 2003**

Rebecca A. Bryant
Zoning Hearing Examiner